

INTERNAL REVENUE SERVICE

District Director

DEPARTMENT OF THE TREASURY

31 Hopkins Plaza
Baltimore, MD 21201

Person to Contact:

Contact Telephone Number:

Refer Reply to:

Date: MAR 24 1997

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(6) of the Internal Revenue Code and have determined that you do not qualify for tax exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

You were incorporated in [REDACTED]. The purpose of the organization is to engage in "any activity or business permitted under the laws of the United States and the State of Florida."

You also state in the Articles of Incorporation that the "capital stock of this corporation shall be divided into [REDACTED] shares of stock with a par value of one dollar (\$1.00), fully paid and non-assessable."

An amendment was filed on [REDACTED] to amend Article III Capital Stock to include the authorization to issue [REDACTED] shares of one dollar (\$1.00) par value common stock designated "common shares", and [REDACTED] shares of preferred cumulative dividend bearing shares of one dollar (\$1.00) per share par value, designated non-voting "preferred shares." All shares of stock of the corporation will be subject to the right of redemption.

The bylaws at Article V, Capital Stock, Section 1. Amount and Rights states that "The authorized capital stock of this corporation shall consist of [REDACTED] "class A" common voting stock, one dollar (\$1.00) par value, non-assessable; [REDACTED] of "class B" which shall be preferred and bearing money market interest rates cumulative dividend; and "class C" stock, [REDACTED], bearing money market interest rates. Class B and Class C stock shall have no voting privileges with the corporation. All rights to vote and all voting power shall be vested exclusively in the holders of Class A common stock only.

In regards to the "capital stock" statement in the application, you describe all shares of stock and amounts issued. You state that the Board of Directors voted in September, 1996 to recall all Class B stocks of the corporation at cost.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]	[REDACTED]	[REDACTED]				
Date	[REDACTED]	[REDACTED]	[REDACTED]				

You also stated that the corporation has annually paid interest at prevailing money market notes to Class B stockholders at the conclusion of each calendar year.

You submitted a "MISSION" statement with goal/objectives outlined as follows:

"To provide a service to [REDACTED] that will enhance their business.

[REDACTED] is much more than a "buying" group, as well as participating in volume rebates and better overall pricing. [REDACTED] is a complete service association. We deal with every aspect of the industry in your behalf.

Our goal is to become the #1 "buying" group in the country to become the standard in which our industry is measured. We want to surround ourselves with dealers who are energetic and progressive in their thinking and willing to make the changes that are sometimes necessary.

We are here to help you become strong and prosperous!"

Your "How Does It Work" statement indicates the following:

"When you join [REDACTED], you become a member of the Nation's largest buying group, [REDACTED]. Key America has over [REDACTED] members doing an excess of [REDACTED] in retail sales...

As a member of [REDACTED], you will receive better pricing, volume rebates, and special models not offered to the general dealers. Once your application has been accepted, we will then contact all the suppliers. You will be put into their computers as a "Key Member" and will then receive the additional benefits..."

The "Membership" statement indicates that "[REDACTED] is a member owned group. Ownership is through the purchase of stock. Stock membership is [REDACTED] (\$[REDACTED]) per member.

As a membership corporation, "Full members/shareholders must be [REDACTED] within the borders of [REDACTED] and [REDACTED]. Associate memberships are extended to electronics dealers in [REDACTED] and [REDACTED] who do not sell [REDACTED]

Membership dues are [REDACTED] (\$3[REDACTED]) from each owner of "Class A" stock. Dues may be increased or decreased from time to time upon a two-thirds (2/3) vote of the membership.

In describing your activities, you state that "The primary purpose of the organization is to provide a group buying unit for the acquisition of inventory for resale from appliance manufacturers at favorable prices associated with volume discounts.

The corporation organizes rebate sales incentive programs between member/dealers and manufacturers. The organization acts as the financial intermediary in the rebate transaction.

The manufacturer pays rebate funds due members to [REDACTED] then subsequently distributes the funds to the members. The funds are treated as a liability upon receipt and a reduction of the liability upon distribution to the member due the rebate.

The organization also organizes trade shows and instructional seminars on new products and [REDACTED]. Two major shows are held each year. Seminars and smaller shows are held throughout the year.

The organization, in prior years, purchased [REDACTED] for resale to its members at cost. The program was terminated in early 1996. The organization does, on occasion acquire products on the behalf of individual members for subsequent resale to members at cost.

Your income is derived from membership dues, sales, warranty sales, meeting income, circular income, dues for remission to another trade association, promotional funding by manufacturers, investment income and miscellaneous.

You have derived expenses for income taxes, bad debts, repairs and maintenance, advertising, employee benefits, professional fees, interest, occupancy, depreciation and other related expenses.

Section 501(c)(6) of the Internal Revenue Code provides for tax exemption of business leagues, chambers of commerce, real estate boards, boards of trade, and professional football leagues, which are not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations states that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. Its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

Revenue Ruling 56-65, published in Cumulative Bulletin ("C.B.") 1956-1, on page 194, held that a local organization whose principal activity consisted of furnishing particular information and specialized individual service to its individual members engaged in a particular industry through publications and other means to effect economies in the operation of their individual businesses was performing particular services for individual persons. Such organization did not qualify for exemption under section 501(c)(6) of the Internal Revenue Code as a business league even though it performed functions which were of benefit to the particular industry and the public generally.

Revenue Ruling 59-391, 1959-2 C.B., page 151, held that an organization composed of individuals, firms, associations, and corporations, each representing a different trade, business, occupation, or profession whose purpose is to exchange information on business prospects has no common business interest other than a mutual desire to increase their individual sales. The activities are not directed to the improvement of one or more lines of business, but rather to the promotion of the private interests of its members.

Revenue Ruling 66-338, 1966-2 C.B., page 226, discusses an organization that provided the members with an economy and convenience in the conduct of their individual businesses by enabling them to secure supplies, equipment, and services more cheaply than if they had to secure them on an individual basis. The ruling states that "these activities constitute the performance of particular services for individual persons as distinguished from activities aimed at the improvement of business conditions in their trade as a whole. The activities also constitute a business of a kind ordinarily carried on for profit even though they are conducted on a cooperative basis and produce only sufficient income to be self-sustaining." It was concluded that "since the sale of supplies and equipment and the furnishing of consultation services are the organization's principal activities, the organization does not qualify for exemption from Federal income tax under section 501(c)(6) of the Code.

In "Indiana Retail Hardware Association, Inc. v. United States", 366 F. 2nd 998 (1966), the organization was a trade association representing hardware retailers in the State of Indiana with a membership of approximately 80 percent of the hardware retailers in the state, excluding hardware sections of department stores. The organization's primary purpose as demonstrated by its operations was to engage in the sale of supplies and equipment to the members. The activities in connection with the operation constituted the performance of particular services for individual members as a convenience or economy in their business, rather than the improvement of business conditions of retail hardware merchants as a whole. The activities were also found to be ordinarily carried on for profit. It was concluded that the organization was not entitled to exemption under the provisions of section 501(c)(6) of the Internal Revenue Code.

Your organization issues shares of stock on which dividends may be declared. An organization that issues shares of stock carrying the right to dividends is organized for profit and is not exempt. "Northwestern Jobbers Credit Bureau v Commissioner", 37 F. 2nd 880 (1930) Ct. D. 206, C.B. 1x-2,228 (1930).

The information you have submitted reveals that your organization is involved in organizing rebate sales incentive programs, marketing techniques for new products, acquiring products on behalf of individual members, promoting individual businesses through advertising means, providing insurance and warranty benefits and consulting services. These activities are similar in scope to the activities cited in the aforementioned revenue rulings and court cases.

[REDACTED]

Based upon the information you submitted and the applicable law cited, it is concluded that you are primarily organized and operated to provide specific services for the private benefit of your members. You are a stock corporation and, as such, is organized for profit. You are not promoting the improvement of business conditions in one or more lines of business as a whole as mandated by section 501(c)(6) of the Code.

It is concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(6) of the Code.

In accordance with this determination, you are required to file Federal income tax returns on Form 1120.

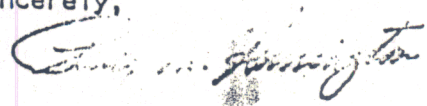
If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax authorization with us.

If you do not appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination on this matter.

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone phone number are shown in the heading of this letter.

Sincerely,


Paul M. Harrington
District Director

Enclosure: Publication 892

cc: [REDACTED]
[REDACTED]
[REDACTED]